



The Big Sky Country

EXHIBIT 4
DATE 2.13.07
HB 424

MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DEBBY BARRETT
HOUSE DISTRICT 72

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Chief Jim Kropp
1420 East Sixth Avenue
Helena, Montana

November 8, 2005

Dear Jim,

I believe answers to the following questions could be quite helpful to all interests regarding the "stream access" issue. During the last six years in each of FW&P's 7 Districts:

- 1) How many property owners complaints did your office receive?
- 2) How many sportsmen complaints did your office receive?
- 3) Have the bulk of the complaints received in each district been located in the same area?
- 4) How has each district handled or responded to these complaints:
 - A. investigate the complaint?
 - B. visit the site?
 - C. have any property owners or sportsmen been fined or arrested by FW&P's law enforcement?

Thank you,

Debbie Barrett
Debbie Barrett

Kropp, Jim

To: Debbie Barrett
Subject: Stream access request

Hi Rep Barrett,

Hope all is well with you and your family and you all had a great Christmas. I have completed a follow up with the regions in reference to your requests regarding stream access situations around the state.

Generally the calls we receive can be broken down into three categories, complaints from landowners regarding trespass related to stream access for both fishing and hunting, complaints from sportsman regarding landowners or their agents interfering with the public's use of the stream, and complaints from sportsman regarding fencing across streams or fencing at bridge access sites. All of this is compounded with numerous educational requests by all effected interests for interpretations of what the stream access law means and how it is applied.

At this point we don't track data on calls or questions we receive related to stream access. For the most part wardens do attempt to visit sites where problems occur and meet with the reporting parties. Over the years there have been many conflicts worked out on the ground to the satisfaction of both parties and as you know there are still some situations in need of remedies. I would estimate we issues 15-20 trespass citations / year for stream access related violations. This would include both fish and hunting related complaints. The citations we do issue for stream access related infractions are mixed in with general trespass citations and can't be separated without an extensive records search by hand. In many situations landowners don't wish to press charges and are satisfied if we are able to resolve the matter via education. Many times either the landowner or sportsman can be misinformed regarding the law, and the ordinary high water mark is sometimes indistinguishable which adds to the conflict.

Here's a quick rundown on the hotspots you requested from the regions;

R-1 Problems with urban growth and encroachment on streams by residences. One main fencing issue resolved on Mudd Creek (Flathead Co) stemming from a Non -resident landowner fencing across the creek, portage easements were negotiated. Flathead County road department has place several "No Parking " signs at bridge crossings due to safety concerns.

R-2 Mitchell Slough is still the main hotspot. Also, there are numerous issues associated with Duck hunters hunting waterfowl in over-developed areas along the Bitterroot River. As you know, waterfowl hunting within the ordinary high-water marks is permissible since it is a water-related activity. Most of the complaints erupt from waterfowl hunters shooting shotguns near residences.

R-3 The Ruby River issues continue to be at the forefront. There is an ongoing trespass incident from the Sportsman float this summer alleging a trespass by one of the sportsman. I believe this is still unresolved and is in front of the Madison Co. Attorney with a request for prosecution from the landowners Attorney. The East Gallatin River in the Gallatin Valley generates several stream access complaints each year. The river flows through a well developed areas and many landowners call complaining of fisherman presence on the river. There is also some waterfowl hunter complaints as well. There are also fencing issues crossing streams that appear to be non-livestock related. I am personally familiar with most of these from being in R-3 for more than a decade.

R-4 There have been issues related to state land complaints located between Cascade & Ulm regarding hunters coming off of the Missouri River and improperly applying stream access to reach private property. Similar situations occur on the lower Sun River and Lower Missouri River below Fort Benton. Wardens have issued some citations for trespass. Although the upper Missouri is packed with fisherman and outfitters, complaints regarding trespass have been isolated and relatively few in number compared to the amount of use by sportsman in the area.

R-5 A current issue is brewing over access and the bridge replacement at Sweet Grass Creek bridge near Melville. Also, in the recent past there have been access and fencing issues on the Stillwater and Boulder Rivers. Wardens have issued citations in the past & the department has worked with landowners and sportsman groups locally to address conflicts.

R-6 & R-7 Not many issues regarding access to streams, some hunting related complaints from sportsman (floaters) accessing private land from river ways.

Debbie, I will be meeting with all the Captains in January. I will ask each of them to track and report the specific incidents and our agency response for the calendar year 2006. This will help give us some recent and verifiable data for next

STREAM ACCESS RESPONSES

What follows is a brief and to a large extent, anecdotal overview of stream access-related issues that have been reported to Game Wardens over the last year. This canvass only reflects the impressions of law enforcement staff in Regions 1 through 5 for calendar year 2006. However, a couple of common points surface from this information.

First, stream access problems in the conventional sense _ that is, simply associated with the recreational use of waterways below the high-water mark _ are fairly unusual. While the contributing circumstances that led to the law have changed for the better, new issues have arisen.

Access complaints at bridges are becoming a recurrent issue. Use of right of way abutments and demands for their use is increasing. An increasing number of complaints are being fielded regarding alleged obstruction to access at these points.

Big game hunting is not allowed under the Stream Access Law between the ordinary high-water marks. This year, wardens received what they described as numerous and increasing in number inquiries about the legality of floating a river and hunting big game

Social change and subsequent development of previously undeveloped areas is presenting new issues that fall under the broad category of stream access. Most notably are those related to public access to waterways in areas that, through residential development, have cut off or severely limited traditional access to streams. Additionally, with increased development around lakes, public access to these bodies of water is starting to become problematic. Both these situations could set the stage for new water-based recreation access issues in the not too distant future.

TIPMONT

Only 2 TIPMONT reports came in this year relating to Stream Access violations. In one, a vehicle drove into a stream outside of Red Lodge. The other was a situation where individuals accessed a river by an easement posted against trespassing. Although both were clear violations, the suspects were never found and no citations were issued in either situation.

Region 1

FWP addressed a few complaints on lakes where private landowners tried to block access to the public. Specifically, those lakes are Abbot, Peterson, (both adjoining Echo Lake), and Bigfork bay of Flathead Lake. Additionally, there were several issues on Flathead River sloughs for waterfowl hunters. In some cases there were questions from hunters inquiring as to specifically what their stream access rights were, and some landowners who tried to discourage them from lawfully using the area.

We anticipate that the rapid population growth in Region 1 will lead to increased problems and conflicts as more waterfront areas are developed and historic access is closed to the public. We have encountered some landowners trying to limit access or post legal public points of access on the river to discourage public use, a phenomena we are also seeing in big game hunting areas as well. There have been several inquiries about Mitchell Slough issues in the Bitterroot as some landowners feel they have similar situations and are interested in pursuing similar actions.

There appears to be an increase in complaints by anglers and hunters, who have historically accessed areas legally, who are being confronted by property owners in efforts to keep them out. There continues to be confusion, even at the county attorney's level, as to whether or not stream access applies to lakes and shorelines as well. FWP has received inquiries about using OHV's on the lakeshores of Flathead Lake.

Another issue that has surfaced is violation of regulations related to activities prohibited below the high-water mark. A number of instances have arisen where motor vehicles are driven on a streambed below the high water mark and/or in the river channel itself. Although obviously a problem, identifying the actual violation for criminal action has been difficult. There is no criminal penalty section in the Stream Access Law for violations.

Region 2

Many of the issues in the region revolve around trespass (Inadvertent and intentional) adjacent to population centers (such as Missoula) done by individuals involved in parties and littering. There remain issues in the high development areas such as immediately adjacent to Missoula and the Bitterroot Valley. Complaints associated with waterfowl hunting are a constant with allegations of trespass as well as obstruction of lawful access. There are also instances of contested access at bridges as well as questions on the legality of fencing in two places. No citations for violations of stream access law have been written this year in Region 2. Below are listed areas in the regions where problems are regularly reported:

- Deer Creek Bridge
- Kona Bridge Lolo Creek
- Turah Bridge Clark Fork River
- Mitchell Slough (Headgate to Victor Crossing to Bell Crossing)
- Sleeping Child Creek
- Victor Crossing (Main stem of Bitterroot River)
- Bell Crossing (Main stem of Bitterroot River, West & South side of Bridge)
- Woodside FAS (Teller Wildlife Property)
- Tucker East County Road Access (East Channel of Bitterroot River)
- Clark Fork River (Broken Circle Ranch & Sager Lane to Deer Lodge)
- Rock Creek and Hwy 38
- Flint Creek and Black Pine Road Bridge
- Rock Creek and Windlass Gulch

- Poker Joe FAS (possible contested easement)

R-3

Poindexter slough in Dillon continues to be a problem area with a non-resident landowner fencing off the old railroad access below Tash Bridge. No NTA's were issued this year but it is an area that was kept under observation throughout the summer by regional wardens. There have been citations written in the past for stream access infractions in the vicinity.

The county bridge access on the Red Rock River (At the old Briggs Ranch) is a site where a landowner has told the public that they cannot park there. The bridge does provide legal access to the river and the landowner's complaint is actually related to parking congestion along county road.

A FWP officer contacted a party trespassing to reach Grasshopper Creek near the Millpoint area. Members of the party were eventually cited for fishing without licenses and issued warnings for stream access violations.

A landowner in the Sun West reach of the Upper Madison River repeatedly harassed fishermen who had stopped on a Madison River island to fish within the subdivision boundaries. The landowner was contacted by the local warden and advised the float fisherman were entering the river at a legal access points.

A nonresident landowner on the Ruby River that is building a new house near the river repeatedly contacted and harassed float fishermen on the river. At least two complaints were received early in the spring before high water conditions.

The annual Butte Skyline float on the Ruby resulted in one stream access complaint whereby an angler was utilizing bushes nearby or above the high water mark to relieve himself. No citations were issued.

A landowner on the Yellowstone River contacted the Park Co Sheriff regarding stream access trespass near Tom Miner Basin. A fishing party had stopped along the riverbank to eat but was within the legal high water mark. A deputy responding to a complaint suggested the fisherman to move on down stream and the group complied.

Region 4

The Missouri River has relatively good access and no issues at this time. The Dearborn River continues to be problematic. The Stream Access law does not allow for big game hunting, but there have been increasing questions from those who want to either hunt within the high water marks or access state sections or other public lands by the river for that purpose. Above the intersection of the Dearborn with Highway 200, some landowners still have objections regarding angler use. One landowner who has had trespass problems indicated that in the Montana Atlas (a privately-published publication)

there are some places where the road crosses the river that indicates a formal, state-owned fishing access site where is no none.

On the positive side, the Dearborn Ranch, FWP and the Medicine River Canoe Club have worked together to install a number of float gates on the river where before barbed wire had simply been strung across the river to contain livestock. The ranch and the canoe club continue to make positive efforts to accommodate floating while at the same time, allow the ranch to exert the necessary control over where their livestock graze.

On the Smith River, there had been some long-standing disagreements by landowners on access. These, to a great extent have subsided.

Region 5

Recently a complaint was made to FWP by a non-Indian Billings sportsman regarding a contact made with Crow Tribal Game Wardens while floating the Bighorn River to hunt waterfowl. The Tribal wardens requested to see tribal recreation permits even though the sportsman, along with others, was floating on the river, were not above the high water mark at any point and thus, not required to possess the permit. The Tribal Wardens have maintained that the tribe has jurisdiction over the riverbanks below the high water marks, that all recreation within the exterior reservation boundaries requires the purchase and possession of a tribal recreation permit. Crow wardens have stated that they do not recognize state jurisdiction resulting from the Bighorn River Decision (Montana vs. US). Following the contact, the sportsman received a citation by mail from a Crow Tribal Game Warden. The sportsman was given notice to appear in Crow Tribal Court for "hunting waterfowl on the Bighorn River between 11 and 12 mile marker HWY 313 within the exterior boundaries of Crow Reservation without permits".